

Testimony of Leon D. Weaver, V.M.D.
Before the House Committee on Energy and Commerce
Subcommittee on Environment and Hazardous Materials

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Good afternoon, my name is Leon Weaver. I am a dairy farmer by trade and a veterinarian by training. I have been involved with dairy farming either as a veterinarian, dairy management consultant, or dairy farmer since 1972. Before becoming a full-time dairyman, I served as the Director of the Veterinary Medicine Teaching and Research Center at the University of California at Davis.

My testimony today is given on behalf of my dairy farm, Bridgewater Dairy, LLC, my dairy cooperative, Continental Dairy Products, Inc., and our sister cooperative, Select Milk Producers, Inc. Bridgewater Dairy milks nearly 4000 cows and Bridgewater Farming, raises crops on 2800 acres of ground. In that respect, we are by any measure a large farming operation, and the size of Bridgewater Dairy is typical of the dairies that are members of Continental Dairy Products and Select Milk Producers.

Even though my farm is large, I still consider it a family business. My son, my partner, our wives, and I own the dairy. My wife, son, partner, and I are involved in the day-to-day operations of our farm. Bridgewater Dairy represents a huge investment of time, money, and capital by my family and my partner's family. It is the same for the dairy farmers in my cooperative and dairy farmers across the country. Dairy farming is capital intensive. Cows, for example, now sell for over \$2,000 each. The price of land ranges dramatically from region to region, but frequently often sells for two, three, or five thousand dollars per acre. It is easy to see how even a relatively small dairy farm might involve an investment of millions of dollars.

That is why I am here today, to help explain how the uncertainty of EPCRA and

CERCLA regulation adversely affects agriculture by risking the investment and hard-earned capital of family farm operations. Before I explain the details of exactly how farmers are placed at risk, it is important that the Committee realize that responsible farmers are not menaces to the environment. I have met with literally thousands of farmers, mostly dairy farmers, over the last thirty-three years, and not one that I have met wishes to harm the environment. It is in the best interest of dairymen and women to protect the environment. Dairy farmers survive because of the health of their animals and the quality of the feed and water that their cows consume. We all realize that healthy, well-treated cows produce high-quality milk.

In addition, farmers often go above and beyond what is required by law to protect the environment. For example, many of the dairies in my cooperative have installed manure digesters to turn waste into electricity. Other farms have provided for additional buffer zones between the fields where manure might be spread and sensitive watercourses. These are only two examples of voluntary actions of responsible farmers, above and beyond those required by state or federal law. These actions, in the short-term, increase the cost of farming. A manure digester is a multi-million dollar investment. Similarly, ground taken out of crop production to serve as a buffer provides no monetary return or cattle feed. Nevertheless, these actions are beneficial for us, our neighbors, and the environment as a whole.

Lastly, farmers are already subject to environmental regulation related to manure management. Bridgewater Dairy is required to record and monitor the levels of phosphorous in the ground on which we spread manure. This nutrient balancing and phosphorous monitoring is documented, and the records are maintained. These records, which occupy an entire banker's box, demonstrate that in the eight years of our operation, soil phosphorus levels are being maintained at the safe and agronomic levels recommended by agronomists and all relevant

regulatory agencies.

Returning to the current CERCLA/EPCRA situation, the clear problem is that no one in this room can provide a clear answer to the question, “To what extent are agricultural operations subject to the various requirements of CERCLA and EPCRA”? Others on this panel have explained why the legislative history demonstrates that Congress had no intent to include naturally occurring manure as a covered substance, but if the answer were crystal clear, there would be no need for this clarifying legislation. Obviously, the current provisions are not so clear as to definitively exclude manure from EPCRA and CERCLA. I am aware of no judicial body that has answered this question. As a result, farms are being placed at risk.

The costs of remediation required either by a lawsuit for natural resource damages or any other governmental enforcement action could quickly reach levels that would destroy the value of an entire family farm operation. Additionally, EPCRA provides authority for citizen actions for enforcement, and the risk of a farmer facing a citizen lawsuit demanding draconian penalties is real. Of course, there would always be the possibility of settlement at a lesser amount than what was demanded. But to me, that is simply a shake down. Where the law is unclear, and the results so illogical, such risks are unacceptable.

Imagine the scenario where the responsible farmer faces a multi-million dollar penalty for spreading manure on his fields—not because the manure has contaminated a stream in violation of the Clean Water Act, but simply because the farmer’s cows produced manure. Of course, the petroleum-based fertilizers that the farmer could have used instead of naturally occurring manure are exempt from CERCLA and EPCRA. Somehow, if these chemicals pass through an animal and are then re-deposited on the land as the “toxic substance” called manure, they become subject to regulation? I respectfully argue that Congress did not intend that the

naturally occurring nutrients in animal manure be regulated as inherently toxic substances.

Due to the uncertainty of EPCRA and CERCLA application, and as part of our push for environmental responsibility, my farm, and the farms of several other Continental and Select members, entered into the EPA Consent Decree and Monitoring Study to measure volatile organic compounds and particulate matter produced by agricultural operations. In fact, some of the highest rates of participation in this program by dairies are in the areas where Continental and Select member farms are located. We hope that this study establishes scientifically based data that can be used by farmers to understand the impacts that their operations have on the environment and, if appropriate, work to improve their operations.

This legislation will not render the Monitoring Study a nullity. In addition to EPCRA and CERCLA, the Consent Decree and Monitoring Program involves important studies and waivers of liability under the Clean Air Act. I, for one, regardless of Congressional action on EPCRA and CERCLA, plan to continue my participation in the monitoring program so that this important study can be completed. Accordingly, the current EPA program will serve an important purpose even if Congress confirms that the manure produced by farming operations is not subject to CERCLA and EPCRA.

Thank you for the opportunity to appear here this afternoon. Once again, I urge that you act to protect America's responsible farming operations from the potential of financial ruin by clarifying the coverage of CERCLA and EPCRA.